



appeal is finally heard today.

On 27.8.99 the following order was passed by this Court:

"The applicants shall depute an officer/person to the site so as to ascertain whether the hoarding put up on the land in question is protruding or is illegal in any manner. Before visiting the site, intimation with regard to the date and time shall be given to the present respondents so that they can also remain present at the time when legality of the construction/hoarding put up on the land in question is being recorded by the officer of the appellant-Corporation."

In pursuance of the said order, on 1.9.99, in presence of representatives of the respondents, an officer of the appellant-Corporation had visited the place in question and had drawn a sketch showing position of the hoardings put up by the respondents on the land in question. The sketch and Rojkam prepared on 1.9.99 are placed on record.

Upon perusal of the above-referred rojkam and sketch, it is crystal clear that the hoardings which have been put up by the respondents are not protruding outside the land belonging to the respondents and the said hoardings are not put in an illegal manner. In the circumstances referred to hereinabove, there is no question of taking any action against the respondents in relation to the hoardings in question.

At the time of hearing of this appeal, it has been understood amongst the parties that without giving formal intimation and without obtaining permission from the appellant-authorities, the defendants shall not make any structural changes in the existing hoardings. If the defendants want to make any structural change in the existing hoardings, a proposed plan with regard to the change to be made, shall be submitted to the concerned officer of appellant No. 1. If the proposed change is not illegal, the concerned officer of appellant No.1 shall accord necessary sanction as expeditiously as possible.

It appears that because of the peculiar facts and circumstances of the case, a direction was given in para 2 of the operative portion of the order that if any encroachment on the street land is made by the respondents, the appellant-Corporation should give a notice to draw attention of the respondents to the said

illegality and if the encroachment is not removed by the respondents, then only necessary action should be taken by the appellants. It has been submitted by Mr. Prashant Desai appearing for the appellant Corporation that the trial court should not have given such a direction because in certain cases, when an encroachment is made on a public street, even without any notice the encroachment can be removed as per the provisions of the BPMC Act. As stated hereinabove, the said direction was given by the court because of peculiar facts and circumstances of the case and as the said direction is not general in nature, it is hereby clarified that the said direction is not binding upon the appellant authorities in all cases.

In view of the above observations and understanding arrived at amongst the parties, the appeal is finally disposed of as partly allowed. The order dated 24.8.98 stands modified in terms of this judgment. There shall be no order as to costs.

---

(hn)